

No. 03-\_\_\_\_\_

In The  
Supreme Court of Texas

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IN RE RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, AND  
DAVID DEWHURST, LIEUTENANT GOVERNOR OF THE STATE OF TEXAS  
AND PRESIDENT OF THE TEXAS SENATE,

*Relators.*

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Original Proceeding in the Supreme Court of Texas

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**RELATORS' EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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AND DAVID DEWHURST, LIEUTENANT GOVERNOR OF THE STATE OF TEXAS  
AND PRESIDENT OF THE TEXAS SENATE

## **IDENTITY OF PARTIES AND COUNSEL**

### **PARTIES:**

**Rick Perry, Governor of the State of Texas**  
**David Dewhurst, Lieutenant Governor of the State**  
**of Texas and President of the Texas Senate**

**Relators**

**State Senators: Gonzalo Barrientos, Rodney G. Ellis,**  
**Mario Gallegos, Juan "Chuy" Hinojosa, Eddie Lucio, Jr.,**  
**Frank L. Madla, Eliot Shapleigh, Leticia R. Van de Putte,**  
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**Respondents**

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### STATEMENT OF THE CASE

*Nature of the Case:* This is an emergency, original petition for a writ of mandamus, seeking to compel eleven absent State Senators to fulfill their official duty—under the Texas Constitution and Senate Rules—to answer a call on the Senate and attend a special legislative session called by the Governor.

### STATEMENT OF JURISDICTION

This Court has concurrent jurisdiction with the Texas courts of appeals to issue mandamus relief against officers of the State under Texas Government Code §22.002(a). TEX. GOV'T CODE §22.002(a); *see In re Texas Senate*, 36 S.W.3d 119 (Tex. 2000) (orig. proceeding). The urgency of resolving the Senate's stalemate to conduct legislative business, coupled with the significant statewide ramifications of the absent Senators' refusal to return to the Senate floor, provide compelling reasons as to why this petition was not first presented to the court of appeals or to the trial court. TEX. R. APP. P. 52.3(e); *see, e.g., Republican Party of Tex. v. Dietz*, 940 S.W.2d 86 (Tex. 1997) (orig. proceeding); *Sears v. Bayoud*, 786 S.W.2d 248 (Tex. 1990) (orig. proceeding).

Relators are also filing today a virtually identical mandamus action in Travis County District Court. Relators believe that this Court has mandamus jurisdiction over Respondents and urges the Court to exercise it in this case because of the critical need for prompt judicial resolution of the main issue, and because this case involves issues of statewide importance. However, out of an abundance of caution, Relators have filed the district-court action as well so that Relators may proceed as expeditiously as possible in the event that the Court declines to exercise jurisdiction. If the Court concludes it has jurisdiction in this case, Relators will

promptly move to abate the mandamus proceeding in the district court so that this Court can resolve this issue of statewide importance.

### **ISSUE PRESENTED**

Whether this Court may order State Senators who have fled the State to return to the Senate Chamber to fulfill their non-discretionary duty—imposed by the Texas Constitution and the Senate Rules—to attend a legislative session called by the Governor.

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**RELATORS' EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

This mandamus action seeks an order compelling the attendance of absent Senators who have failed to appear in response to the Governor's call for a second special session. This Court should issue a writ of mandamus ordering the absent Senators to fulfill their official, non-discretionary duty under Article III, §5 of the Texas Constitution, which provides that "[t]he Legislature shall meet . . . when convened by the Governor," and Senate Rule 5.03, which orders that "[n]o member shall absent himself or herself from the sessions of the Senate without leave unless the member be sick or unable to attend." TEX. CONST. art. III, §5; TEX. S. RULE 5.03. Because the absent Senators are officers of the State and have a non-discretionary duty to attend legislative sessions, the Court should grant emergency mandamus relief to compel the absent Senators to return to the Senate floor immediately.

**STATEMENT OF FACTS**



On July 28 2003, Governor Rick Perry issued a proclamation calling the Texas Legislature to convene in special session. Proclamation by the Governor of the State of Texas, July 28, 2003, App. A. The purpose of the special session was to consider legislation relating to: (1) congressional redistricting; (2) certain transportation-related issues; (3) state finance issues, including adjustments to school district fiscal matters; (4) certain election-related issues; and (5) reorganization and reform measures applicable to state government. Special Messages of July 28 and July 29, App. B. Shortly after the call to convene on July 28, Lieutenant Governor and Senate President David Dewhurst called the roll and determined that a quorum was lacking. Affidavit of Patsy Spaw, App. C. Accordingly, a call of the Senate was moved, seconded by five Senators, and passed without objection. *Id.* Eleven Senators failed to convene in Austin for the called session, choosing instead to flee to Albuquerque, New Mexico that same day. August 1, 2003 Letter to Governor Dewhurst from Eleven Absent Senators, App. D. At the time of this filing, they have not returned to Austin.

The absent Senators were aware that the Legislature had been convened and a call made upon the Senate. *Id.* Nevertheless, the absent Senators have refused to return to Austin to perform their legislative duties, stating that they will return to work “only under the tradition established by the Senate” that two-thirds of the members agree to take a bill out of order. *Id.*

Relators have identified only one other occasion in Texas history when state lawmakers have fled the State in order to break a quorum—a mere three months ago when

fifty-one House members fled to Ardmore, Oklahoma—and this current episode follows directly upon the heels of that earlier flight in the 78th Regular Session. *See* Statement from House Democrats, May 12, 2003, App. E. In that case, the Representatives who traveled to Ardmore “refus[ed] to provide a quorum” and “refus[ed] to participate” in a legislative process that those legislators believed to be “unfair.” *Id.*

Now, three months later, the absent Senators’ current refusal to participate in the legislative process is having an immediate and dramatic impact upon the State. No bill can be enacted without consideration by the Senate, TEX. CONST. art. III, §31, and the Senate may not take action to consider any legislation without a two-thirds quorum. *Id.* art. III, §10. Consequently, the eleven Senators’ absence is preventing the Senate as a body from considering any of the five topics made the subject of the second called session. Relators have filed this mandamus action to compel the absent Senators to return to the Senate and allow the Legislature to conduct its business.

### SUMMARY OF THE ARGUMENT

Over the past hundred days, representative government in Texas has ground to a halt. Twice, elected legislators have fled the State *en masse* in a deliberate attempt to defeat a quorum of their respective Houses and close down the Texas Legislature. These Representatives and Senators, frustrated by the will of the majority, have decided to circumvent the legislative process altogether. Believing they lack the votes to prevail on the merits, they have opted to flee the state instead.

The Texas Constitution does not allow this option. It places on elected Senators a mandatory duty to attend the Senate when called. Legislators “*shall* meet . . . when convened by the Governor,” TEX. CONST. art. III, §5 (emphasis added), and “[n]o member shall absent himself or herself from the sessions of the Senate without leave unless the member be sick or unable to attend,” TEX. S. RULE 5.03. Senators may vote as they please; they may speak as they please; but they must show up.

Ordinarily, if Senators were to refuse to come to the Senate floor in order to defeat a quorum, the Constitution and Senate Rules would provide a direct remedy: when a call of the Senate is ordered, absent Senators “may be sent for and arrested wherever they may be found” by the Sergeant-at-Arms. See TEX. S. RULE 5.04 (prescribing the “manner” in which the Senate may “compel the attendance of absent members” under the express terms of Article III, Section 10 of the Texas Constitution). Texas Senate Rule 5.04 was voted on and approved by all thirty-one Senators; for eleven Senators to leave the State of Texas frustrates and evades the remedy agreed to by all Senators.

In a move unprecedented in the State of Texas, the absent Senators—like the absent Representatives three months earlier—have fled the State altogether, as fugitives from arrest. Thus, their refusal to fulfill their constitutional duty as Senators to attend the Senate session is compounded by their efforts, heretofore successful, to escape the reach of the Texas Constitution and Senate Rules.

In these extraordinary circumstances, the Supreme Court of Texas is best situated to defend the Texas Constitution. “It is emphatically the province and duty of the judicial department to say what the law is,” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803),

and here, the law places a mandatory duty upon elected Senators to attend the Senate session and not flout their constitutional obligations by shutting down the Texas Senate.

### **ARGUMENT**

#### **I. THE TEXAS CONSTITUTION AND THE SENATE RULES IMPOSE ON STATE SENATORS A NON-DISCRETIONARY DUTY TO RESPOND TO A CALL TO QUORUM AND ATTEND LEGISLATIVE SESSIONS.**

The Texas Constitution imposes upon all state legislators—including State Senators—a mandatory duty to attend special legislative sessions called by the Governor. See TEX. CONST. art. III, §5(a) (“The Legislature *shall* meet every two years at such time as may be provided by law *and at other times when convened by the Governor.*”) (emphasis added); see also *Walker v. Baker*, 196 S.W.2d 324 (Tex. 1946) (orig. proceeding) (holding that Governor has sole power to convene legislative sessions, and noting that Article III, §5 exclusively provides for how and when Senate may convene). Moreover, Senate Rule 5.03 states that “[n]o member shall absent himself or herself from the sessions of the Senate without leave unless the member be sick or unable to attend.” TEX. S. RULE 5.03. Thus, both the Texas Constitution and the Senate rules create a duty to attend legislative sessions that the absent Senators are presently refusing to obey.

The mandatory nature of this duty is reflected in both constitutional and rule provisions authorizing compulsion of attendance. Article III, §10 of the Texas Constitution authorizes each House of the Legislature to compel the attendance of absent Members to achieve a quorum:

Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day,

*and compel the attendance of absent members, in such manner and under such penalties as each House may provide.*

TEX. CONST. art. III, §10 (emphasis added). This constitutional language provides the basis for Senate Rule 5.02, which further provides that a sub-quorum number of Senators may convene and compel the attendance of absent members by “send[ing] the Sergeant-at-Arms or any other person or persons for any or all absent members.” TEX. S. RULE 5.02.

After a call of the Senate is moved for and properly seconded, the Senate doors are to be locked and a roll call taken, with any absences noted. TEX. S. RULE 5.04. “Those for whom no sufficient excuse is made, by order of the majority of those present, may be sent for and arrested wherever they may be found and their attendance secured and retained by the Sergeant-at-Arms or officers appointed by the Sergeant for that purpose.” *Id.* The authority to compel attendance provided by the Constitution and Senate Rules removes any doubt that the duty to attend legislative sessions is mandatory and non-discretionary.

The mandatory and binding nature of the duty is further reflected in the Preamble to the Rules of the Senate of the 78th Texas Legislature, which provides:

Pursuant to and under the authority of Article III, Section 11, of the Constitution of 1876, as amended, and notwithstanding any other provision of statute, the Senate adopts the following rules to govern its operations and procedures. The provisions of these rules and of the Constitution shall be deemed the only requirements *binding* on the Senate, notwithstanding any other requirements expressed elsewhere in statute.

PREAMBLE TO TEX. S. RULES, Statement of Authorization and Precedence (emphasis added).

All members of the Texas Senate—including the absent Senators—voluntarily bound themselves by unanimous vote to the Senate’s duty of compulsory attendance by taking an oath swearing that they would “faithfully execute the duties of the office” of State Senator

and “preserve, protect, and defend the Constitution and laws” of the United States and of Texas. *See* TEX. CONST. art. XVI, §1. Therefore, the absent Senators should not be heard to argue either that they have no duty to attend simply because they have fled the State or that their flight has placed them outside the range in which the duty can be enforced.

The purpose behind the attendance requirement is made clear by the absent Senators’ effect on legislation; were it otherwise, any time that a minority number of legislators decides that they oppose any item on a special session agenda, they could effectively end the session before it begins by failing to attend and make a quorum. Such conduct is unconstitutional because it deprives the Governor of his constitutional authority to call a special session. *See* TEX. CONST. art. IV, §8; *id.* art. III, §5. No law or authority allows a limited group of legislators to dictate whether or not a legislative session will take place.

**II. THIS COURT HAS AUTHORITY TO ISSUE A WRIT OF MANDAMUS COMPELLING ABSENT SENATORS TO RETURN TO THE FLOOR OF THE TEXAS SENATE IN RESPONSE TO THE LIEUTENANT GOVERNOR’S CALL TO QUORUM.**

**A. Mandamus Is Available to Compel State Officials to Perform Their Non-Discretionary Duties.**

“A writ of mandamus will issue to compel a public official to perform a ministerial act.” *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). This Court does “not doubt that a public officer . . . may be guilty of . . . such an evasion of positive duty as to amount to a virtual refusal to perform the duty enjoined,” and “in such a case a mandamus would afford a remedy where there was no other adequate remedy provided by law.” *See Arberry v. Beavers*, 6 Tex. 457, 1851 WL 4016, at \*11 (1851).

An act is ministerial when the duty is clearly defined by law with such certainty that nothing is left to the exercise of discretion. *Anderson*, 806 S.W.2d at 793; *see also Turner v. Pruitt*, 342 S.W.2d 422, 423 (Tex. 1961) (“Writs of mandamus issue to control the conduct of an officer of government . . . when the duty to do the act commanded is clear and definite and involves the exercise of no discretion—that is, when the act is ministerial.”); *P.P. Rains v. Simpson*, 50 Tex. 495, 1878 WL 9285, at \*4 (1878) (stating that a ministerial act is one whose duties are defined with “such precision and certainty as to leave nothing to the exercise of discretion or judgment”).

Mandamus will lie when there is (1) a legal duty to perform a non-discretionary act, (2) a demand for performance, and (3) a refusal to perform. *O'Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (citing *Doctors Hosp. Facilities v. Fifth Court of Appeals*, 750 S.W.2d 177, 178 (Tex. 1988)). All three elements exist in the present case.

Both the Texas Constitution and the Senate Rules obligate Senators to respond to a quorum call and attend legislative sessions called by the Governor. *See* TEX. CONST. art. III, §§ 5, 10; TEX. S. RULE 5.03. As discussed above, the duty of attendance is ministerial because it is clear, precise, unambiguous, and does not require discretion.

The fact that Respondents have refused the demand to return to the Senate Chamber is not in dispute, as Respondents’ letter to Lieutenant Governor Dewhurst reveals. August 1, 2003 Letter to Governor Dewhurst from Eleven Absent Senators, App. D. In these circumstances, mandamus is available to compel the performance of the ministerial duty. *See Jessen Assocs. v. Bullock*, 531 S.W.2d 593, 602 (Tex. 1976) (orig. proceeding) (holding that

mandamus lies “where the duty to act is clear and there is no disputed question of fact”).

**B. This Court Is Authorized to Issue Writs of Mandamus Against Officers of the State, Including State Senators.**

Each State Senator is an “officer of state government” for the purposes of section 22.002(a). Generally, “the term ‘state officer’ includes those superior executive officers who constitute the heads of the executive departments of the state, *or such as belong to one of the three constituent branches of the state government.*” *Lane v. McLemore*, 169 S.W. 1073 (Tex. Civ. App.—Galveston 1914, no writ) (emphasis added)); *see also State v. Hewitt*, 52 N.W. 875 (S.D. 1892) (holding that “the term ‘state officers,’ . . . includes only such general officers as immediately belong to one of the three constituent branches of the state government”). Plainly, Senators “immediately belong to one of the three constituent branches of state government,” namely, the Legislature.

By conferring original jurisdiction on the Texas Supreme Court to mandamus “any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals,” the Government Code implicitly recognizes that office-holders of the highest rank in any of the three branches of government are officers of the State. TEX. GOV’T CODE § 22.002(a). Furthermore, the Code deliberately excludes from the reach of the Court’s mandamus jurisdiction certain members of the executive and judicial branches of government—the Governor and the judges of the Court of Criminal Appeals—but it does not exclude legislators, who are members of the third branch. These omissions demonstrate a legislative intent to make legislators subject to the Court’s mandamus power.

Cases interpreting the Court’s mandamus jurisdiction also support the conclusion that



state Senators are “officers of the state” subject to mandamus by this Court. In *Betts v. Johnson*, the Court noted that although “[a]ll county and district officers are officers of the state government in a general sense,” not all such officers are “officers of state government” for purposes of the Court’s mandamus jurisdiction. 73 S.W. 4, 4-5 (Tex. 1903) (orig. proceeding). Addressing the mandamus statute’s applicability to executive-branch personnel, the Court held that “it was the purpose of the Legislature to include only such state officials as are charged with the general administration of state affairs, namely, the heads of state departments.” *Id.* at 5. The Court reasoned that this limitation was supported by the facts that “[t]hese officers must reside, and their offices must be kept, at the seat of the state government, and their official functions are to be performed there,” and that generally such mandamus proceedings “involve[] questions which are of general public interest and call for a speedy determination.” *Id.*

These very same considerations apply here. The Legislature is charged with general responsibility to legislate on matters affecting the state. TEX. CONST. art. III, §1. The Legislature must hold its sessions in Austin, the seat of state government. *Id.* art. III, §58. And because the Legislature holds the exclusive power to enact state law, mandamus proceedings against Members of the Legislature are similarly likely to involve questions which are of general public interest and call for a speedy determination. Under the standard articulated in *Betts*, all State Senators readily qualify as “officers of state government” for mandamus purposes.

**C. Mandamus Is Appropriate In the Circumstances of This Case.**

Under both the Texas Constitution and the Senate Rules, the absent Senators have an official, non-discretionary duty to attend the current Special Legislative Session that was called on July 28, 2003, unless they are sick or otherwise physically unable to attend. The absent Senators are neither. They have stated numerous times that their express purpose in traveling to New Mexico was to block a quorum in the Senate and thereby prevent that body from taking action. Accordingly, this Court should issue a writ of mandamus ordering the absent Senators to return to the Chamber of the Senate and comply with their ministerial duty to attend the legislative session called by the Governor.

If this Court were to hold that mandamus is unavailable, there would be no effective remedy to compel the absent Senators to perform those duties imposed upon them by both the Texas Constitution and their own Rules. In ordinary circumstances, the Constitution and Senate Rules provide a direct remedy: arrest by the Sergeant-at-Arms pursuant to Senate Rules 5.02 and 5.04 and Article III, §10 of the Texas Constitution. But, through their unprecedented act of fleeing the State altogether, the absent Senators have utterly frustrated the ordinary remedy, leaving the Senate in complete disarray.

If there is no remedy for the absent Senators' refusal to perform their constitutional duty, then the structural safeguards that ensure that the Legislature may meet and conduct the State's business will be eroded, to the detriment of the State of Texas. And, a roadmap for future derelictions of duty will be established if any group of Legislators opposing legislation favored by a majority can simply refuse to carry out their duties, deny a quorum, and flee the

State. To say the least, such an outcome does not serve the interests of the people of the State of Texas. Nor does the Constitution envision allowing the legislative process to be taken hostage by a limited group of absent legislators.

It is black-letter law that mandamus will lie to compel the performance of an official's purely ministerial or non-discretionary duty. That the absent Senators' appearance is required is equally indisputable, as both the Texas Constitution and the Senate's own rules make their attendance mandatory. Accordingly, Relators' request for this Court to issue a writ of mandamus to compel the absent Senators to appear and return to the Senate floor immediately is both necessary and proper.

### **III. THE CASE PRESENTS A JUSTICIABLE CONTROVERSY.**

This Court has previously exercised its power to decide disputes between competing political factions or entities when a legal right is at stake or the controversy involves the interpretation of a statute or constitutional provision. *See Gilmore v. Waples*, 188 S.W. 1037, 1042 (Tex. 1916) ("However much the courts desired to do so, they could not avoid the responsibility of deciding such questions, even if perchance some one should fail to discriminate between political rights and those legal rights which arise under the law, and declare the court was adjudicating purely political questions.").

Under the federal system of government, which closely parallels the state system, the *appropriateness* of a legislative rule may be a political question. *See United States v. Ballin*, 144 U.S. 1, 5, 12 S.Ct. 507, 509 (1892) (stating that congressional rules may not "ignore constitutional restraints or violate fundamental rights," and that "there should be a reasonable

relation between the mode or method or proceeding established by the rule and the result which is sought to be attained," but holding that "within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just").

Once a legislative body has enacted a rule, however, its *compliance* with that rule is a justiciable issue. *Yellin v. United States*, 374 U.S. 109, 83 S.Ct. 1828 (1963). In *Yellin*, a Senate witness had been convicted of contempt for "willfully refusing to answer questions put to him by a Subcommittee of the House Committee on Un-American Activities." 374 U.S. at 111, 83 S.Ct. at 1830. The United States Supreme Court vacated the contempt conviction because the Committee failed to comply with its own rule, which "provid[ed] for an executive session when a public hearing might unjustly injure a witness' reputation." 374 U.S. at 116, 83 S.Ct. at 1833. In so holding, the Court observed: "It has been long settled, of course, that rules of Congress and its committees are judicially cognizable. . . . [A] legislative committee has been held to observance of its rules, just as, more frequently, executive agencies have been." 374 U.S. at 114, 83 S.Ct. at 1832 (citations omitted); *see also Christoffel v. United States*, 338 U.S. 84, 88-89, 69 S.Ct. 1447, 1450 (1949) ("The question is neither what rules Congress may establish for its own governance, nor whether presumptions of continuity may protect the validity of its legislative conduct. The question is rather what rules the House has established and whether they have been followed.").

In this case, the Legislature's complete immobilization caused by the Senators' absence demonstrates harm and prejudice sufficient to support mandamus. Without

mandamus relief, no effective redress is available either for the absent Senators' refusal to "meet . . . when convened by the Governor," as required by Article 3, §5 of the Texas Constitution, or for their failure to comply with Senate Rule 5.03, which requires that "[n]o member shall absent himself or herself from the sessions of the Senate without leave unless the member be sick or unable to attend." TEX. CONST. art. III, §5; TEX. S. RULE 5.03.

#### IV. NO OTHER ADEQUATE REMEDY EXISTS.

Mandamus, although otherwise available, may not lie if an adequate remedy exists elsewhere. *See Ark. Bldg. & Loan Ass'n v. Madden*, 44 S.W. 823, 824 (Tex. 1898) (orig. proceeding) (stating that "the writ of mandamus should not issue where the relator has another adequate legal remedy for the enforcement of his right"); *Arberry v. Beavers*, 6 Tex. 457, 1851 WL 4016, \*12 (Tex. 1851) ("[Mandamus] is an extraordinary remedy, to be resorted to only when the party has no other adequate means of redress afforded him."). In the circumstances of the present case, mandamus is appropriate because no other adequate remedy exists.

By fleeing the state, the absent Senators have made themselves effectively immune from the Senate's ability to compel their return through the means specified in the Senate Rules and authorized by the Texas Constitution—arrest by the Senate Sergeant-at-Arms or persons acting pursuant to his authorization. *See* TEX. CONST. art. III, §10; TEX. S. RULE 5.04. So long as they remain out of state, neither legal process nor physical compulsion is reasonably available to ensure the absent Senators' return. Moreover, the current special session—and with it, consideration of all the items included in the Governor's call—is set

to expire August 26, 2003. In these circumstances, the Court's exercise of its mandamus jurisdiction is both appropriate and necessary to resolve the stalemate that has stalled the legislative process entirely.

#### **CONCLUSION**

For the above reasons, the Court should issue a writ of mandamus ordering any absent Texas Senator who has failed to appear and return to the Senate floor, in response to Texas Governor Rick Perry's call to convene and the pending call of the Senate, to perform their official, non-discretionary duty to appear and return to the Senate floor immediately. The Court should grant this emergency mandamus relief without delay so that the Texas Senate can resume its constitutional obligations and duties to the citizens of Texas.

Respectfully submitted,

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COUNSEL FOR RELATORS

### **CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the Relator's Emergency Petition for Writ of Mandamus via facsimile or hand delivery on August 7, 2003, upon:

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Counsel for Senators Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, and Zaffirini

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R. Ted Cruz

**VERIFICATION**

STATE OF TEXAS       §  
TRAVIS COUNTY       §

Before me, the undersigned notary, on this day personally appeared R. Ted Cruz, a person whose identity is known to me. After I administered an oath to him, upon his oath he said the following:

"My name is R. Ted Cruz, and I am capable of making this affidavit, and the facts contained in this affidavit are true and within my personal knowledge. I am an attorney for Relators. I have read Relators' Emergency Petition for Writ of Mandamus, and any facts stated in it are within my personal knowledge and are true and correct. The documents attached in the appendix thereto are true and correct copies."

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R. Ted Cruz

Sworn to and subscribed before me by R. Ted Cruz on August 7, 2003.

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Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_